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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/660,319

Filing Date: September 11, 2003

Appellant(s): BALDWIN ET AL.

Christopher M. Goff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 December 2006 appealing from the Office action mailed 26 July 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An Appeal Brief was filed on 13 July 2007 in related case 10/659,967.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 13-18, and 37-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Gatto et al. (6,570,054).

With respect to claim 1, Gatto discloses an absorbent article, as shown in figure 1, comprising a liner having a lotion formulation deposited on the body-facing surface, as disclosed in column 5, lines 1-11, in an amount from about 0.05 to 100 mg/cm², as disclosed in column 33, lines 13-16. The lotion formulation comprises from 10-89% of an emollient (column 18, lines 65-67), from 10-50% of a structurant (column 22, lines 57-61), and from 0.1-40% of a rheology enhancer (column 11, lines 25-28). The rheology enhancer comprises polyisobutylene, as disclosed in column 15, lines 58-65.

With respect to claims 2 and 3, the emollient is present in an amount of 60-80%, as disclosed in column 18, lines 65-67.

With respect to claim 4, the structurant is present in an amount of 20-40%, as disclosed in column 22, lines 57-60.

With respect to claims 5 and 6, the rheology enhancer is present in an amount of 1-25%, as disclosed in column 11, lines 25-28.

With respect to claim 13, the lotion formulation further comprises antibacterial and antiviral actives, as disclosed in column 24, lines 59-67.

With respect to claim 14, the emollient comprises polysiloxanes, fatty alcohols, fatty acids, or lanolin, as disclosed in column 16, lines 35-61.

With respect to claim 15, the structurant has a melting point of about 45°-85° C, as disclosed in column 19, lines 42-45.

With respect to claim 16, the structurant comprises waxes, as disclosed in column 22, lines 38-43.

With respect to claims 17 and 18, the lotion formulation is present in the amount of 10-40 mg/cm², as disclosed in column 33, lines 13-16.

With respect to claims 37 and 41, the rheology enhancer further comprises butylenes/ethylene/styrene copolymers, as disclosed in column 15, lines 64-65.

Claims 7-12 and 19-36 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gatto et al. (6,570,054).

Gatto discloses the lotion formulation of the claimed invention, comprising the identical components in the identical amounts. Therefore, the lotion composition of Gatto will exhibit the identical physical properties of the instant invention, and inherently have a melt point viscosity and a temperature viscosity of 100,000-500,000 cPs and 100-5,000 cPs, respectively. The lotion composition of Gatto will also inherently exhibit a penetration hardness of about 60-120.

In the alternative, Gatto discloses a desired apparent viscosity of 1-100,000 cPs, as disclosed in column 8, lines 53-58. Gatto further discloses in column 40, Table 7, a desired Yield Stress of 10-80. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the lotion composition of Gatto with melt point and temperature viscosities of 100,000-500,000 cPs and 100-5,000 cPs, respectively,

and a penetration hardness of about 60-120, since it has been held that where the general conditions of the claim (i.e. a viscous yet stable lotion) are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 1-6 and 10-18 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/659,967. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would be obvious to one of skill in the art to employ the skin care lotion composition in use with an absorbent article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

In response to the appellant's argument that Gatto fails to disclose the claimed rheology enhancers, it is noted that Gatto discloses in column 15, lines 58-65, a number of suitable polymeric rheology enhancers. Among the suitable rheology enhancers is polyisobutylene (see column 15, line 63), which is synonymous with, and structurally identical to, polyisobutene, one of the rheology enhancers disclosed in Claims 1 and 21.

Appellant also states that the disclosure of Gatto of alpha-olefins does not fulfill the claimed limitations because alpha-olefins are disclosed in combination with styrene or isobutene, it is noted that Gatto discloses in column 13, lines 45-47, that the rheology

enhancers may be a mixture of various rheological agents. Therefore, Gatto contemplates the combination of the rheological agents disclosed in column 15, lines 58-65.

Gatto anticipates the present claims with both the disclosure of polyisobutene and the teaching of a combination of any of the other disclosed rheological agents.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson

/Lynne Anderson/

Examiner, Art Unit 3761

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